

Honorable Franklin D. Burgess

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

SHANNA ALLERS-PETRUS,

Plaintiff,

v.

**COLUMBIA RECOVERY GROUP,
LLC,**

Defendant.

No. C08-5533 FDB

DEFENDANT'S MOTION FOR
FEES AND COSTS

NOTED FOR APRIL 24, 2009

Comes Now, Columbia Recovery Group, and moves for the following relief:

**I.
RELIEF REQUESTED**

On March 24th, this court granted Columbia's Motion for Summary Judgment

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1 dismissal of all of Plaintiff's claims. Columbia requests attorney fees and costs
2 pursuant to Rule 11, 15 U.S.C. § 1692K and FRCP 54(d)(2).
3

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5
6 **II.**
7 **AUTHORITY**

8 Plaintiff sued Defendant under the FDCPA, which provides:

9 On a finding by the court that the action under this section was
10 brought in bad faith and for the purpose of harassment, the court
11 may award to the defendant attorney's fees reasonable in relation
12 to the work expended and costs.

13 15 U.S.C. § 1692K(a)(3)
14

15 In addition, Rule 11(b) of the Federal Rules of Civil Procedure requires that in
16 all representations to the court an attorney conduct "an inquiry reasonable under the
17 circumstances." FRCP 11(b). Under Rule 11, a court can impose an "appropriate
18 sanction upon the attorneys, law firms or parties." FRCP 11(c).
19

20 Rule 11 also provides that attorneys presenting pleadings, motions or other
21 papers (i.e. response and reply briefs) are "certifying that to the best of the person's
22 knowledge, information and belief" that the documents are not being presented for an
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27 DEFENDANT'S MOTION FOR
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1 improper purpose, such as . . . to cause unnecessary delay or needless increase in the
2 cost of litigation, [FRCP 11(b)(1)] and further certifying that "the allegations and other
3 factual contentions have evidentiary support[.]" FRCP 11(b)(3).
4

5 The record herein contains ample evidence that (1) this suit was filed without
6 sufficient inquiry by FDCPA counsel as to whether Allers-Petrus had disclosed her
7 claims to the bankruptcy court, (2) Allers-Petrus made contradictory representations
8 to two different courts, and, most egregious (3) Allers-Petrus chose to keep
9 perpetuating the misrepresentation after the summary judgment motion was filed,
10 rather than dismiss this case, her counsel should have withdrawn rather than assist her
11 in this endeavor.
12
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14

15 It is this last conduct that is the most troubling: Allers-Petrus made blatantly
16 false statements in her amended schedules to the Bankruptcy Court and counsel herein
17 attached those schedules as exhibits to the Responsive brief, in support of her
18 opposition to summary judgment.
19

20 Both counsel and Allers-Petrus had to know that the amended schedules
21 contained false statements, as they, together, sent Columbia demand letters prior to the
22 bankruptcy filing. To thereafter present, to this court as evidentiary support, documents
23
24

1 asserting that Allers-Petrus "became aware of (FDCPA claims) after filing bankruptcy"
2 is a blatant violation of Rule 11.
3

4 By filing false schedules and opposing the Motion for Summary Judgment,
5 Allers-Petrus and her counsel caused Defendant to incur an additional \$1,161.00 in
6 attorney fees, because their behavior compelled Columbia to object to the amended
7 schedules and reply to the Response. A total of \$5,516.25 in attorney fees has been
8 incurred through April 6, 2009.
9

10
11 In *Terran v. Kaplan*, the Ninth Circuit upheld a district court's order awarding
12 fees and costs pursuant to Rule 11. In *Terran*, the Plaintiff had filed his claims without
13 the reasonable inquiry required. By doing so, Kaplan was compelled to prepare a
14 defense to the invalid claims; Rule 11 sanctions were therefore proper. *Terran*, 109
15 F.3d 1428.
16

17
18 Similar to *Terran*, the case at bar should not have been filed in light of the
19 original bankruptcy schedules demonstrating no claims or suits. Allers-Petrus actively
20 pursued the inconsistent positions, obtaining a confirmation of her Chapter 13 plan in
21 Bankruptcy Court while serving initial disclosures and propounding discovery in the
22 case at bar.
23
24

1 Furthermore, even after the inconsistent positions were brought to light through
2 Defendant's Motion, Allers-Petrus perpetuated the fraud by filing amended schedules
3 containing false representation, and her counsel, knowing the information in the
4 amended schedules was untrue, nonetheless submitted these schedules as support for
5 her objection to Summary Judgment, causing Defendant to incur additional fees.
6
7

8 **III.**
9 **CONCLUSION**

10
11 Defendant requests attorney fees pursuant to Rule 11 in an amount to be
12 determined by this court.

13 DATED THIS 7th day of April, 2009.

14
15 LUKE, CASTEEL & OLSEN, PSC

16
17 /s/ Kimberlee Walker Olsen
18 Kimberlee Walker Olsen, WSBA # 28773
19 Attorney for Defendant
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CERTIFICATE OF SERVICE

I, Kimberlee Walker Olsen, certify that on April 7, 2009, I electronically sent, via ECF, true and correct copies of:

1. Defendant's Motion for Fees and Costs/Note on Motion Calendar;
2. Declaration of Defendant's Counsel in Support of Fees and Costs; and
3. [Proposed] Order Granting Defendants' Motion for Fees and Costs

to the following:

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